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## ABSTRACT

This chapter reflects on the civil rights movement and affirmative action at the University of Virginia from the 1960s to 1999, when affirmative action was challenged by people claiming that it discriminated against new groups. It describes how affirmative action changed the author's teaching at the University as he challenged deep-rooted racial beliefs. The chapter suggests that affirmative action is essential to higher education for the pursuit of justice and the health of U.S. society. It details the attack on affirmative action, describing differences between what opponents of affirmative action call racial discrimination and what actual racial discrimination involves. It explains what affirmative action means to education, noting that misconceptions about the admission process often spring from unexamined assumptions that universities base their admissions offers on estimates of candidates' academic promise. In reality, universities typically do not base their admission offers on estimates of academic ability alone but instead also consider interests, needs, talents, skills, sex, race, nationality, and residence. The principle of affirmative action laid out by Justice Lewis Powell of Virginia states that race may be legitimately considered where it is simply one element, to be weighed fairly against other elements, in the selection process. (Contains 20 endnotes.) (SM)

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## CHAPTER 13

# Reflections on Affirmative Action: Its Origins, Virtues, Enemies, Champions, and Prospects

PAUL M. GASTON

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Thirty years ago—it was the spring of 1969—University of Virginia students brought to a climax a new movement of positive action to acknowledge and confront the scourge of racism that tainted their university and denied justice and respect to their fellow citizens. Memories of that season of marches, midnight meetings, speeches, demands and counter-demands, victories and compromises, came flooding in on me as I sat in a jammed-to-the-edges auditorium in the spring of 1999.<sup>1</sup> The out-of-town speaker condemned the university for what she called its practice of racial discrimination. "I don't think you end discrimination by discriminating against new groups of people," Linda Chavez said. "Our admissions policy," she claimed, "smacks of the kind of racism that has long plagued this nation." Then she told us that we must not "continue to judge people based on the color of their skin." Like other speakers across the nation at her end of the political spectrum, she told us that the legacy of Martin Luther King Jr. was on her side.<sup>2</sup>

I sank despondently in my seat, wondering how it was that this Orwellian *Newspeak* had spread viruslike through our culture.<sup>3</sup> Looking about the room I wondered how many here had been infected by it, how many battles would have to be fought all over again. I wished for a time machine that would bring to the stage the young heroes of 1969. Their courage, clarity of moral purpose, and honest engagement with their past had broken the log jam of our common history.

The movement of 1969 was more than a decade in the making. When I joined the faculty in 1957, the burden of the university's history weighed heavily, and was everywhere in plain sight for any who wished to look. Three years earlier the U.S. Supreme Court had unanimously and eloquently condemned the Virginia law requiring that blacks and whites attend separate (and everywhere unequal) public schools. The state's leaders responded with defiance, vowing to shut down schools before they would let black and white children enter them together. In the fall of 1958 they made good on their word, padlocking school doors in Charlottesville, Norfolk, and Warren County. One Virginia county, Prince Edward, was the only community in the South that actually ended public education completely, shutting down its entire school system to avoid integration. The university's president, Colgate Darden, a decent and humane man, knew the folly and understood the mean-spiritedness of this "massive resistance" program, but he could not bring himself to mobilize opposition to it.<sup>4</sup>

The president and the Board of Visitors also opposed the racial integration of the university. They accepted the inevitability of it reluctantly, forcing blacks seeking admission to sue or take advantage of previous court orders. It was not until 1961 that the first African American entered the college, the last bastion in the university of "separate but equal" segregation. Edgar Shannon, who succeeded Darden in 1959, apparently persuaded the Board of Visitors to allow an engineering student to transfer—in the middle of the academic year—thus heading off an inevitable defeat in the courts. All through the late 1950s and well into the 1960s the administration's cautious resistance was unchallenged by influential student opinion. Undergraduates in particular opposed and often venomously condemned each new crack in their culture of segregation. The *Cavalier Daily* denounced a student-faculty boycott of the nearby movie theater that admitted whites only as an affront to the university's tradition of honor. The Student Council refused to allow a newly formed interracial group to exist on campus until it promised it would never foster "demonstrations." Only then would the council, in its own words, deem the group "worthy of the university and of Student Council approval."<sup>5</sup>

By 1963, civil rights groups and discussions were a small but conspicuous part of the UVA scene. Dr. King came to speak in March of that year. The first sit-in took place at a nearby restaurant two months later.<sup>6</sup> Student opposition to the segregation spirit of the past showed itself more forcibly with each new academic season. The administration, however, remained cautious and aloof. Admissions dean Marvin Perry later quietly provided a student interracial group with helpful information on admis-

sions procedures. Thus armed, students became unofficial recruiters of black applicants, traveling to a few black high schools with application forms and a message of welcome. These students were the first "affirmative action" agents at their university.

By 1965, the balance of opinion among student leaders and opinion-makers, as well as in the student body generally, was moving away from the die-hard segregationists. Determined blacks were now making their way into the student body; the national mood was shifting dramatically; far-reaching civil rights laws were passed; the national civil rights movement seemed to have washed away myths that had undergirded segregation; and the cadre of progressive students and faculty grew to the point where a movement for change could be sustained. By 1967 and 1968, *Cavalier Daily* editors blasted the university for its "tolerance of prejudice" and the "furtherance of a sick heritage." And the Student Council, instead of harassing and harnessing interracial and progressive groups, now launched investigations of racial discrimination within the university and churned out resolutions demanding positive action on many fronts.<sup>7</sup>

During the 1968-1969 academic year, the student movement reached the peak of its moral and political persuasiveness. Fifty-two full-time black students were now in residence. A student coalition comprising the newly formed Black Student Union, radical groups like the Southern Student Organizing Committee and the Students for a Democratic Society, and the larger "moderate" group of more traditional leaders set the agenda for university change and charted the course to the future. After one all-night meeting, the coalition issued a bold call for action:

In times like these rational and compassionate men cannot afford to tolerate bigotry. . . . Thus we of the University community feel it to be our moral obligation to press the Board of Visitors, the Governor of the State of Virginia, the Legislature, as well as citizens of the state, for immediate action in the area of race relations. The days are gone in which progress can be measured by minute degrees. The days are gone when apologies are sufficient.<sup>8</sup>

The governor—a massive resistance leader named Mills Godwin who said that even the slightest integration of public schools would be "a cancer eating at the very life blood of our public school system"<sup>9</sup>—dismissed the students rudely when they called on him, making it clear that the culture of segregation would not be dismantled by the state's elected leaders. On the university grounds, however, the coalition shaped Student Council action, set the tone for editorial writing and news reporting, and won critical support from the Inter Fraternity Council. Drawn into this heady

ferment, President Shannon became a partner in the movement for change. Before the year was out, he accepted most of the coalition's demands. The governor and the legislature were bypassed and the Board of Visitors did not rein in the president. The university would never be the same again.

President Shannon made commitments that year to begin to recruit black undergraduates. As a modest move in that direction he gave a young black graduate student the job of traveling about the state to encourage African Americans to apply for admission. The days when blacks could be recruited only unofficially and secretly were over. The president and the faculty also promised to seek black faculty members, to teach a course in black studies, and to inaugurate an interdisciplinary Afro-American Studies program. It was a small beginning, but it was a beginning.

\* \* \*

A generation has come and gone since then. A lot of history has been built on the achievements of the students of the 1960s. Building on these accomplishments, the university began to attract the kind of talented and worthy student body that any self-respecting university should admire. Now, as you walk into any classroom or about the grounds, you will see students from every state in the Union and 108 foreign countries, along with a few (too few) Native Americans and "hyphenated-Americans" of both ancient and recent origin.<sup>10</sup> In addition to African Americans you will see Mexican- Chinese- Japanese- Korean- and Vietnamese-Americans, all virtually absent from the landscape thirty years ago. The revolutionized configuration of the student body has brought with it an inescapable demonstration of the old aphorism that student learning is not limited to the classroom and the library. We understand better than before the importance of what students learn from each other. The broadening of the student body has created a wider range of learning opportunities, quickened and sharpened intellectual discourse, reduced parochialism, and encouraged students to question assumptions and better understand their own inherited values and beliefs.

The presence of black students—they constitute about 10 percent of the student body—works in both obvious and subtle ways to improve the quality and validate the mission of the university. For one thing, it acts as a potent check on previously unchallenged expressions of bigotry and mean-spiritedness. Racial slights and slurs persist, but the presence of real people in place of the demeaning stereotypes born of innocence and ignorance is a powerful educative force for white students and faculty alike;

and, in ways hard to document, that presence helps to relieve them of the hubris Thomas Jefferson long ago identified as one of the unspoken penalties of white power and privilege. For their part, black students in large numbers have become loyal alums, the number of them making financial contributions to the university slightly exceeding the alumni average. This is but one of many validations of the courage, sacrifice, and wisdom of their predecessors who made their admission possible. Their predecessors knew, and they now find, that opportunities once denied are there to be seized. Their lives are better materially, intellectually, and spiritually because they have been here. Finally, the mission of the university to serve the Commonwealth and the nation is forwarded by their presence and perseverance. It is hard to think of a greater asset for social stability and wise public policy than a racially integrated citizenry, loyal to the nation and state but vigilantly watchful and constructively critical of its actions.

The university is a better place because of both diversity and affirmative action, but they are not the same thing. They are entwined in a symbiotic relationship, but positive actions to recruit and enroll black students, although they result in a racially diverse student body, stem from unique origins and their continuation is justified because of ongoing special circumstances. The origins lie in the 300 years of exclusion and exploitation prescribed by the white supremacy culture. In this sense, affirmative action is rooted in America's deepest moral dilemma and goes to the heart of who we are as a people. Justification of its continuation—and, indeed, expansion and improvement—lies in the many structural and personal barriers that have yet to be removed, as well as new ones society condones.

As it has become an integrated and more broadly diverse institution, UVA has simultaneously vaulted to the position of number one (some, especially Californians, would say number two) public university in the country. The commonly offered reasons for our excellence are our internationally acclaimed faculty and the rising competitiveness of the quest for admission. Faculty members decline offers from Harvard, Yale, Princeton, Johns Hopkins, and other famous centers of learning to come or stay here. The best students in the country often decline admission offers from once more-favored colleges and universities to enroll here. One could hardly have imagined this in 1969. Most of us who have been here for all these years, however, know that top faculty and bright students are not the whole story. The deeper explanation is that our excellence is organically related to the very opening up of the university that began with the student movements of the 1960s. Our excellence could not have been

achieved by keeping our doors closed. It has been made possible by opening them. Continued excellence depends not only on keeping them open, but, in fact, on opening them wider. These are needs and ambitions no court should be allowed to repudiate.<sup>11</sup>

### How Affirmative Action Changed My Classes

When I joined the faculty at the University of Virginia in 1957, I hoped that my teaching of Virginian and southern history might challenge young men of the state and region to reevaluate the beliefs that made them feel morally secure at the top of the racial privilege pyramid.

Some of them accepted the challenge. The books they read and the discussions we held led them to concede that slavery was not benign; that segregation was instituted to protect white privilege; and that their own good fortune was rooted in the long history of exploitation of blacks by whites. (Virginia public schools had a history textbook, *Cavalier Commonwealth*, that informed students that many blacks had been happy under the old system.) A few students even came to question the sainthood of General Lee.

These students, however, were a small minority. For the majority, books, lectures, and discussions were weak opponents of the received wisdom handed down from generation to generation by trusted family guardians of historical truth. My notes from the late 1950s and early 1960s are filled with examples of tradition thwarting scholarship. Confronted by *The Strange Career of Jim Crow*, C. Vann Woodward's powerful brief history of segregation, students rejected its findings because father and mother said they were false. More than one cited the authority of the family servant as proof that the "colored people" preferred to be separate from the whites.

One year I worked particularly closely with a tall, handsome, self-assured son of one of the First Families of Virginia. We had friendly, spirited exchanges in my office and agreed to read each other's favorite books. I was cheered by an essay in his final examination paper that acknowledged humane features of the New Deal, including some of its racial policies. A few days later he strolled into my office to ask to change what he had written. He told me: "My father says I was wrong." I countered: "Do you mean that your father can wipe out in one conversation what I have been trying to establish for a year?" "That's about it," he replied, with a broad grin.

Students like this one dominated the classrooms in those days. With their inherited racial beliefs, sometimes questioned by the few dissenting

white students, they were never embarrassed by the presence of the people whose history and nature they spoke of with confidence. Before the decade was out the voices of the dissenters grew stronger, but it was not until the 1970s that black students appeared regularly in my classes. Then the old hubris of race and class was confronted in new and effective ways.

Sometimes the simple presence of blacks in the room undermined it. The central problem with most of the racist whites I taught was not flawed character but the ignorance and inexperience born of their inheritance. Reared to be decent people by the narrow standards of their forebears, they usually applied that decency to their new classmates. In the process they learned to question their own generalizations. I watched many of these students in those early days work on more measured, thoughtful responses to the questions I posed, wondering how they would sound to the new students. I also watched them listen carefully to their black classmates whose views of the history we were studying differed so markedly from theirs. They began to ask themselves why this was so.

These things happened without any planning on my part; they flowed from the mere fact of the integrated classroom, building on the contrasting backgrounds and assumptions of the students. I added to this natural dynamic by structuring assignments that required black and white students to work together cooperatively, collaborating on interviews, research, and writing. There were never enough African Americans in my large lecture class to make this exercise as fruitful as I would have liked, but it worked wonders for those involved as they experienced the real nature of historical inquiry and analysis, freed as much as possible from the warping authority of inherited beliefs.

In the 1980s and 1990s the African American enrollment moved up to about 10 percent of the college population while the self-confident racism of a generation earlier dissipated. My teaching experiences, however, continued to underscore the dangers of an all-white classroom and strengthened my commitment to affirmative action.

The most striking example I recall started in the late 1980s and continued until I retired in 1997. During those years my students viewed and discussed *Eyes on the Prize*, the brilliant six-part television documentary history of the civil rights movement. Both white and black students agreed that the segregation regime shown in the film was appalling. Overwhelmingly, however, the white students coupled their expressions of horror with a sigh of relief that, as they believed, those days were gone. The movement and the government had ended white supremacy. I could have told them about the flaws in their understanding of history, but, as

in my early teaching days, the authority they needed was that of the affected people. And they received it. The African Americans linked past and present in ways that startled and enlightened them. They were better educated students because of the presence, patience, and persistence of their black colleagues.

Affirmative action of the kind I have described here is essential to higher education for many reasons, the pursuit of justice and the good health of our society high among them. My own experience as a teacher tells me it is also essential to the quest for truth and the dissipation of prejudice, as valuable to whites as it is to blacks.

### **The Attack on Affirmative Action**

Until very recently, the university community generally applauded its growing diversity, especially including the 10 percent of the student body that is African American. Isolated complaints and challenges seemed quirky holdovers from the past. Now that has begun to change. Linda Chavez's organization (strategically named The Center for Equal Opportunity) recently issued a well-publicized study charging that our university, along with others, practices a new form of racial discrimination in its admissions process. Blacks—as blacks—are favored over whites—as whites.<sup>12</sup> Following immediately on the release of her study, the Center for Individual Rights named the university as a possible target of a lawsuit. In these new and unsettled conditions, a vigorous student debate over affirmative action emerged, revealing many more supporters than enemies. Critics, however, were more vocal than at any time in the recent past. Concern for the future caused the university rector to appoint a three-person committee from the Board of Visitors to gather information to be ready for a lawsuit should one be entered.

The attack on affirmative action is national in scope. At the close of the 1960s, a powerful reactionary movement began to take shape. We need to understand the history of that movement in order fully to understand the deeper implications and real objectives of the current anti-affirmative action assault.

It began to appear most clearly with Richard Nixon's battle in the 1970s against urban school integration, and then continued with the broad effort in the Reagan years to roll back the progressive racial legislation of the previous generation. Those years also saw the rise of an aggressive, confident conservative movement grappling for the moral high ground. Its crusade was funded and shaped by an ever-increasing number of well-financed and astutely run think-tanks, which churned out a cas-

cading flow of ideologically charged reports on the failures of the liberal past and the promise of the conservative future. With each new pronouncement serving as a catalyst for the next and with the cast of spokesmen broadening to include regulars on the television and talk-show circuits, the nation's confidence in affirmative action as a means of countering the damage done by three centuries of race-based policies of negative action began to waver. Responding to the public mood, a new majority of conservative jurists, appointed by Presidents Nixon, Reagan, and Bush, began to reinterpret the Constitution, finding less and less justification for affirmative action generally.

Radiating from the core of the assault on affirmative action in university admissions policies is a hauntingly 1984-like claim about the nature and legacy of the civil rights movement. With few exceptions, affirmative action critics are hostile to the basic aims of the civil rights movement and are alienated from all but a handful of black leaders today. They claim, however, that their objection to affirmative action is rooted in their loyalty to Martin Luther King Jr. and the authentic aims of the civil rights movement. The civil rights "establishment," as they call it, earns only their scorn. It is, in their catechism, the great betrayer, not the champion, of African Americans and of the American Dream. Rush Limbaugh wonders how "the vision that Dr. Martin Luther King Jr. had for a color-blind society has been perverted by modern liberalism." Newt Gingrich and Ward Connerly, blasting "the failure of racial preferences," begin their broadside by recalling what they call King's "heartfelt voice" that envisioned a society in which people would be judged by "the content of their character rather than the color of their skin."<sup>13</sup>

The "content of their character rather than the color of their skin" excerpt from King's 1963 "I Have a Dream" speech has become the incantation of choice for the foes of affirmative action. It provides moral cover by draping the King mantle over the most unlikely partisans of the civil rights movement and uses the most famous voice of that movement to condemn policies to which he and it gave birth. Ward Connerly, the Sacramento businessman and University of California regent, became the spokesman of a crusade to win votes for the California anti-affirmative action referendum on King's birthday with the announcement that "Dr. King personifies the quest for a color-blind society." Dr. King's family had to request the advocates of this measure to remove their television commercial, which they claimed was distorting King's views. Conservatives claimed that understanding the King legacy should help stop the terrible "drift" from King's ideal. That drift, as conservative Arch Puddington puts it, widened into a powerful rush "to the current environment of quotas,

goals, timetables, race-norming, set-asides, diversity training, and the like." No champion of King pledging fealty to civil rights history could possibly support such things.<sup>14</sup>

Except, of course, that the King that these people enlist in their cause is a figment of their imagination. The shrewd manipulation of the King myth by "color-blind conservatives" began almost as soon as he died, when his nonviolent philosophy was enlisted in the war against the Black Power movement and the outbreaks of urban violence. When the school busing controversy began in the early 1970s, King's words were misused to contain the spread of school integration. By the 1990s his words were routinely exploited as justification for rolling back integration in the colleges and universities achieved through affirmative action.

The "dream" speech is the primary text for "color-blind conservatives." King did say that his dream was deeply rooted in the American dream. But his nightmare, as he said repeatedly, was deeply rooted in the everyday reality of American racism. The promise of the American dream was a promise only; it was, he said, a promissory note to black Americans that was returned by the bank of justice marked "insufficient funds." And to hope for a time when people would be judged "by the content of their character rather than the color of their skin" was not to endorse "race-neutral" public policies. Before the dream of a "color-blind" society could ever become reality, America would have to give up on its color-conscious practice of racial discrimination. King saw few signs of that happening in the country responsible for his nightmares.

It is true that King's comments on affirmative action, a policy not much out of its infancy when he was murdered, generally included approval of a color-blind approach, but never for the same reasons championed by today's reactionary opponents of affirmative action—a fact the Newspeakers work hard to disguise. For one thing, he knew that race-conscious policies in the 1960s would offend large segments of the white population. For another, the debate over how to counteract the damage done by racism was relatively new, and many reasonable people believed that simply opening doors was the critical first step. Moreover, affirmative action in education was hardly on the agenda at all in those days when the first significant numbers of blacks were making their way into previously segregated colleges and universities. Most of the discussion centered on employment and economic inequality. Compensatory policies there were much on King's mind. Testifying before the Kerner Commission, for example, he spoke approvingly of Prime Minister Nehru's "preferential" policies for the Untouchables caste as India's way of "atoning for the centuries of injustice." Instead of proposing a similar policy for America,

however, he urged a sweeping new bill of rights for the disadvantaged. Slavery and segregation had impoverished many whites as well as blacks, he believed, and they should be included in any plan to bring economic justice to the country.<sup>15</sup>

It was during these last three years of his life, after the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, that King advocated radical measures that were and are carefully ignored by "color-blind conservatives." Among other things, success would require facing the truth that "the dominant ideology" of America was not "freedom and equality," with racism "just an occasional departure from the norm." To the contrary, he believed that racism was woven into the fabric of the country, intimately linked to its economic system, social structure, and materialistic values. They were all "tied together," he wrote; racism was not an independent variable, standing there on its own. What was really needed was "a radical restructuring of the architecture of American society."<sup>16</sup>

So much for Martin Luther King as the moral partner of the "color-blind conservatives."

\* \* \*

It was against this background that Linda Chavez brought the anti-affirmative action message to Charlottesville. She came as the guest of a new conservative student group called, without embarrassment or irony, the Jefferson Leadership Foundation. In the wake of Chavez's UVA appearance, one *Cavalier Daily* columnist, a third-year college student, leapt to second her indictment of the university. he saw no irony in castigating admissions dean Jack Blackburn, who had shared the platform with Chavez although he was a beneficiary of the university's quota system giving preferential admissions to Virginia residents.<sup>17</sup> The dean's policy, he said, made it easier for blacks, because they are black, than for whites, because they are white, to win admission to the university. "The admissions office should not admit minority students under a different standard than white students," the columnist wrote. He then added his coup de grace: "This is racial discrimination, plain and simple."<sup>18</sup>

Of course it is not "racial discrimination," plain or simple. Newspeak again. One wants to believe that the author meant no offense, but it is hard not to find something grotesque in the claim of a moral equivalency between two diametrically opposed realities. It strains credulity to believe anyone can actually believe that affirmative action and white supremacy are occupants of a common bed of evil. The same is true for the use of such popular terms as "reverse discrimination," suggesting a turning of

the tables by blacks on whites. Such assertions raise troubling questions about motives and values, to say nothing of logic and knowledge of history. They need to be swept away before they are allowed to be used as justifications for the end of affirmative action. Gearing up for the struggles ahead of us, I sat down to see if I could fashion a metaphorical broom. This is what I came up with.

Racial discrimination, in its historic sense, meant that black people, not individually but as a race, could not

- attend schools attended by white people;
- attend schools equal to those of white people;
- drink from the same water fountains, relieve themselves in the same toilets, or wash their hands in the same basins used by white people;
- eat in the same restaurants as white people;
- sleep in the same motels and hotels as white people;
- swim in the same pools or from the same beaches as white people;
- sit next to white people in lecture halls, at concerts, or in other public auditoriums;
- sit next to white people on buses or streetcars or other means of public transportation;
- be born or seen by a doctor in the same hospitals or buried in the same graveyards as white people;
- vote or hold public office;
- expect to live in the same neighborhoods, hold the same jobs, or attain the same standards of living as white people.

These are particular forms of historic racial discrimination. They are well known for their place in law and as the manifestations of white supremacy that the civil rights movement sought to end. But we need also to recall the values and beliefs of the white supremacy culture that gave rise to and justified this racial discrimination, its ultimate reason for being. These included the belief that black people, not individually but as a race, were genetically inferior to white people and that this genetic deficiency was responsible for the fact that black people were

- less intelligent than white people
- more prone to crime than white people
- diseased
- unclean
- untruthful
- unreliable

- immoral
- violent
- sexually promiscuous
- sexually threatening, through their men, to white women

The list could go on. These beliefs, even internalized by some blacks, allowed too many white people to condone lynch mobs, poverty, malnutrition, and sickness; and to invent means beyond counting of handing out insult and injury.

Affirmative action means none of these things. It bears no generic, historic, analogous, or constitutional relationship to racial discrimination and the white supremacy myths that created it. What affirmative action in education does mean is

- making a broad effort to identify potential black applicants and to encourage them to apply for admission, often in the face of institutional and emotional barriers;
- judging each applicant holistically as an individual, not as a member of a race;
- offering admission to black students whose application materials are predictive of their success in the university;
- offering admission to some black students whose SAT scores and high school grades are lower than those of some white or Asian or Hispanic applicants who are not offered admission;
- instituting a systematic program of encouraging successful black applicants to accept their offers of admission;
- creating an objective measure of the success of these actions in achieving their goals.

Misconceptions about the admissions process often spring from an unexamined assumption that universities base their admissions offers on estimates of the candidates' academic promise. Such estimates, according to this assumption, can be based objectively on standardized tests and high school grades, with perhaps letters of recommendation thrown in. Such estimates of academic ability are obviously important. But their importance is blown completely out of proportion and their relevance skewed when critics claim discrimination because Applicant A was denied admission while Applicant B, with a lower SAT score, was not. In fact, this must be a normal part of the admissions process, essential to the university's mission. No respectable university bases its offers of admission on estimates of academic ability alone. That would be to repudiate the funda-

mental goals and aspirations of higher education in America. Harvard, for example, could probably fill up its freshman class with high achievers from one or two states, most from similar upper- and upper-middle-class backgrounds—with the ironic result that they would stop going to Harvard because it did not have the cosmopolitan student body they wanted and expected.<sup>19</sup>

As Dean Blackburn patiently explains, he and his associates try to take a holistic approach, judging each applicant as a whole person, taking into account, in addition to academic ability, the peculiar interests, needs, talents, skills, sex, race, nationality, and place of residence—all these and probably more. The result is that some students from every applying category are rejected: white, black, Hispanic, Asian—as well as male and female, brilliant and not brilliant, rich and poor, athlete and nonathlete, the musician and the tone deaf, leaders and followers, Virginians and non-Virginians. To say that one of these whose application for admission is not successful is a victim of “discrimination” is to empty the word totally of its derogatory meaning—*making choices on the basis of class or race or category without regard for individual merit; to show prejudice*—and return it to its literal meaning—*to make clear distinctions; to make sensible decisions; to judge wisely; to show careful judgment*. Understanding the word this way would be a good thing, but it is not likely that an opponent of affirmative action would agree, or would concede that we have to make choices and that our discriminating judgment should be trusted. And yet that is precisely what a moral and fair university must do to meet its obligations to the citizenry, the national interest, and students. There is no magic formula, no fixed scale for assigning points for each human characteristic. There is discrimination, good faith, a sense of history, and the vision of a future made better by our colleges and universities.

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So Linda Chavez was wrong when she told her audience here that we are “discriminating against new groups of people.” She was wrong when she said that our admissions policy “smacks of the kind of racism that has long plagued this nation.” She was wrong when she charged that we “continue to judge people based on the color of their skin.” And she was wrong when she told us that Dr. King’s legacy was on her side. She was wrong, but she and her views continue to gain influence.

Affirmative action exists in contemporary America because of the *Bakke* Supreme Court ruling, with the deciding vote cast by Justice Lewis Powell of Virginia, who tried to head off a categorical, mechanical formula that would prohibit race from ever being considered in admissions

deliberations. He laid out the principle that has not been repudiated by the high court. The principle is this: Race may legitimately be considered where it is "simply one element—to be weighed fairly against other elements—in the selection process." J. Harvie Wilkinson, Powell's one-time law clerk, later a UVA law professor, and now a member of the Fourth Circuit, praised the justice for insisting "that race, *qua* race," could be used by university admissions officers. The irony of a southern conservative saving affirmative action is easy to understand, Wilkinson writes, because Powell believed that law "had to serve the cause of social stability."<sup>20</sup>

It is not only social stability that is at stake today, although that continues to be a major factor. Now, as it prepares for its defense against a possible lawsuit, one hopes that the University of Virginia will take a firm stand not just in defense, but in proud affirmation of what it has achieved in its quest to build a remarkable student body meeting the burden of history and serving the present and future needs of the Commonwealth and the nation.

Twice in its history Virginia has had to choose whether to be the South of the nation or the north of the South. Both times it chose the latter. In 1861 it overcame principled opposition from many of its citizens to secede from the Union. Its prestige emboldened the Confederacy; its manpower, leadership, and resources lengthened and made bloodier the fratricidal war; and its fight for the preservation of slavery became an indelible part of its legacy. Nearly a century later it once again overcame the principled opposition of fellow Virginians to lead the South in a crusade of "massive resistance" against the supreme law of the land, which now called for an end to segregation in its public schools. That decision, like the first one a century earlier, emboldened fellow white southerners and helped to plunge the South and the nation into a long nightmare of hatred and recrimination from which they have not yet recovered.

The Board of Visitors examined the issue after the threat of litigation and criticized the affirmative action plan. University president John Casteen quietly ended the university's affirmative rating process for black applicants in the fall of 1999, following a high-level review. There was, however, an angry response from students and faculty, and the university announced that it was reconsidering the policy change. Who would have thought, when I first came to the university grounds, that our students and our faculty would have to fight against a threat from the federal courts to return us to much greater segregation. After three decades as an interracial university, many wanted to hold onto the changes. Ironically, the threat was from the federal courts which had been transformed by national politics, with little awareness of the history of the issue or what has

been accomplished, lacking the wisdom of Justice Powell, whose hopes have been abundantly realized at Mr. Jefferson's university.

### Notes

1. I was not actually at the university during the 1968–1969 academic year; on a research leave elsewhere, I kept in touch through letters from students, including the leaders of the student protests, as well as through colleagues, the *Cavalier Daily*, and occasional visits to Charlottesville.
2. *Cavalier Daily*, March 3, 1999.
3. George Orwell coined the term *Newspeak* to stand for the way in which a totalitarian society manipulated and subdued the populace by deliberately using words in ambiguous and contradictory ways—telling lies by appearing to tell the truth. See his classic *Nineteen-Eighty-Four, a Novel* (New York: Harcourt, Brace, 1949). Traces of *Newspeak* have always appeared in American political discourse, but perhaps never quite so pervasively as in the consultant-driven smooth rhetoric to which we are subjected today. The case of Dr. King as the enemy of affirmative action and the enemies of affirmative action as the friends of Dr. King is one of many such examples, albeit one of the most insidious.
4. Colgate W. Darden to George S. Mitchell, July 25, 1953. Southern Regional Council Archives; copy in author's possession. For a superb study of Darden's racial views, see Mark N. Hamer, "Colgate W. Darden and the School Desegregation Crisis," Honors thesis, University of Virginia, 1988.
5. Bryan Kay, "The History of Desegregation at the University of Virginia: 1950–1969," Unpublished manuscript, University of Virginia, 1979, pp. 66–77; *Cavalier Daily*, April 20, 1961.
6. Paul M. Gaston, "'Sitting in' in the 'Sixties: A Public Lecture Sponsored by the University Union on Life in the 1960s," Unpublished speech, 1985; copy in author's possession. Copies are sometimes available on the Web for courses in American history.
7. *Cavalier Daily*, December 10, 1978.
8. Quoted in Kay, "History of Desegregation," p. 144.
9. Benjamin Muse, *Virginia's Massive Resistance* (Bloomington: Indiana University Press), 1961, p. 30.
10. The figure for foreign countries represented in the student body comes from the academic year 1997–1998.
11. For the most part, affirmative action has worked to enlarge and strengthen a black middle class, here as well as elsewhere. The 10 percent African American enrollment at the university is far below the percentage of blacks in the state. Among the many needs of the state and the nation that universities must help to meet in the future is the opening up of educational opportunity to the poor, blacks especially, but whites also.
12. Robert Lerner and Althea K. Nagai, *Preferences in Virginia Higher Education* (Washington, DC: Center for Equal Opportunity, 1999).
13. Rush H. Limbaugh III, *See: I Told You So* (New York: Pocket Books, 1993), p. 244; Newt Gingrich and Ward Connerly, "Face the Failure of Racial Preferences," *New York Times*, June 15, 1997.
14. Jack E. White, "I Have a Scheme: Ward Connerly's Effort to Hijack Dr. King's Legacy Is Full of Black Humor," *Time*, February 3, 1997, p. 46; Arch Puddington, "What to Do about Affirmative Action," *Commentary*, June 1995.

15. On the origins of affirmative action and King's role in the discussion, see John David Skrentny, *The Ironies of Affirmative Action: Politics, Culture, and Justice in America* (Chicago: University of Chicago Press, 1996), esp. p. 96.
16. David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: William Morrow, 1986), pp. 536-539; "Federal Role in Urban Affairs," Hearings before the Subcommittee on Executive Reorganization of the Committee on Government Options, U.S. Senate, 89th Cong., pt. 14, p. 2981.
17. The 65 percent quota for Virginia residents raises a revealing insight into the thinking of anti-affirmative action advocates. Several students over the past few years have remarked to me that they oppose affirmative action because it stigmatizes black students as inferior, unable to gain admission without the affirmative action crutch. Yet I have never met a white Virginian who felt that the quota system that benefited him or her could be similarly regarded as a crutch without which admission would have been denied. Nor have I ever met a Virginian who felt "stigmatized" by the quota system even though out-of-state students had to meet higher standards, on average, than in-state students.
18. Peter Brownfield, "Eliminating the Race Question," *Cavalier Daily*, March 8, 1999. Most of the students at the Chavez-Blackburn "debate" seemed to me to support affirmative action and their dean. That is evidently true of student opinion in general, although no polls have been taken. Student support for affirmative action emerged even before the threat of a lawsuit appeared on the scene, most clearly with the formation of a group called Advocates of Diversity in Education.
19. These points, and many others, are made with particular authority in William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, NJ: Princeton University Press, 1998). The Bowen and Bok work, unique in its empirical study of the actual effects of affirmative action, is based on the records and experiences of 45,000 students over twenty years at twenty-eight elite institutions. It concludes that affirmative action has been a major factor in the creation of a stable black middle class and that it has taught whites to value integration. The University of Michigan lawyers, building on this study, plan to make their own empirical case for affirmative action. See Steven A. Holmes, "Diverse U. of Michigan Tries New Legal Tack," *New York Times*, May 11, 1999.
20. J. Harvie Wilkinson, *From Brown to Bakke: The Supreme Court and School Integration: 1954-1978* (New York: Oxford University Press, 1979), pp. 301-303.